

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-cv-02987-WJM

CHRISTOPHER YOUNG,

Plaintiff,

v.

The BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN, and the NFL PLAYER DISABILITY & NEUROCOGNITIVE BENEFIT PLAN,

Defendants.

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**ANSWER TO PLAINTIFF'S COMPLAINT**

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The Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Retirement Plan") and the NFL Player Disability and Neurocognitive Benefit Plan (the "Disability Plan") answer the allegations set forth in Plaintiff's Complaint, paragraph by paragraph, as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendants admit that in October 2009 Plaintiff submitted an application for Line-of-Duty disability benefits under the Retirement Plan. Defendants admit that Line-of-Duty disability benefits are awarded to Players who have a "substantial

“ disablement” arising out of League football activities, as defined by the terms of the Plan(s). Defendants admit that Line-of-Duty benefits are similar to partial disability benefits. Defendants deny each and every remaining allegation in paragraph 6. To the extent Plaintiff relies on the terms of the Plan(s) to support his claim(s), Defendants deny Plaintiff’s characterization of the Plan’s terms, and instead rely on the terms of the Plan(s) to speak for themselves.

7. Defendants admit that the Disability Initial Claims Committee (“DICC”) is the initial claims fiduciary for the Retirement Plan and the Disability Plan. Defendants admit that one DICC member is appointed by the NFL Management Council, and another DICC member is appointed by the NFL Players Association. Defendants admit that the Retirement Board is the named fiduciary for the Retirement Plan, and that the Retirement Board is responsible for reviewing and issuing final determinations on all claims for benefits under the Retirement Plan. Defendants admit that the Retirement Board has six voting members, with three voting members appointed by the NFL Management Council, and three voting members appointed by the NFL Players Association. Answering further, Defendants state that the Disability Board is the named fiduciary of the Disability Plan, and that the Disability Board is responsible for reviewing and issuing final determinations on all claims for benefits under the Disability Plan. The Disability Board has six voting members; three are appointed by the NFL Management Council, and three are appointed by the NFL Players Association. Defendants deny each and every remaining allegation in paragraph 7. To the extent Plaintiff relies on the terms of the Plan(s) to support his claim(s), Defendants deny Plaintiff’s characterization

of the Plan's terms, and instead rely on the terms of the Plan(s) to speak for themselves.

8. Denied. To the extent Plaintiff relies on the terms of the Plan(s) to support his claim(s), Defendants deny Plaintiff's characterization of the Plan's terms, and instead rely on the terms of the Plan(s) to speak for themselves.

9. Defendants admit that, in conjunction with his application for Line-of-Duty benefits, Plaintiff was required to undergo an evaluation with a neutral physician selected by the Retirement Plan. Defendants admit that the plan neutral physician was an orthopedic specialist. Defendants admit that the plan neutral physician rated Plaintiff's orthopedic impairments under the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fifth Ed.), and in so doing calculated Plaintiff's "combined whole person impairment rating" at 28%. Defendants deny each and every remaining allegation in paragraph 9. To the extent Plaintiff relies on the terms of the Plan(s) to support his claim(s), Defendants deny Plaintiff's characterization of the Plan's terms, and instead rely on the terms of the Plan(s) to speak for themselves. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

10. Defendants admit that the Plans provide total and permanent disability ("T&P") benefits to eligible Players. Defendants admit that a Player may be eligible for

T&P benefits if the DICC, the Retirement Board, or the Disability Board find that he is substantially unable to engage in any occupation for remuneration or profit, and the condition is permanent, within the terms of the Plans. Defendants admit that Plaintiff applied for T&P benefits under the Retirement Plan in June 2014. Defendants deny each and every remaining allegation in paragraph 10. To the extent Plaintiff relies on the terms of the Plan(s) to support his claim(s), Defendants deny Plaintiff's characterization of the Plan's terms, and instead rely on the terms of the Plan(s) to speak for themselves. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

11. Defendants admit that Plaintiff submitted at least one report from a Jill M. Anderson, Ph.D., with his June 2014 application for T&P benefits. Defendants deny each and every remaining allegation in paragraph 11. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

12. Defendants admit that, in conjunction with his June 2014 application for

T&P benefits, Plaintiff was referred to and evaluated by two neutral physicians retained by the Retirement Plan: Edward J. O'Connor, M.D., and Johnny H. Wen, Ph.D. Defendants deny each and every remaining allegation in paragraph 12. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

13. Defendants admit that the DICC denied Plaintiff's application for benefits in September 2014. Defendants further admit that the DICC's September 2014 decision was based, in part, on the findings of Dr. Wen and Dr. O'Connor. Defendants deny each and every remaining allegation in paragraph 13. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

14. Defendants admit that Plaintiff timely appealed the DICC's initial decision denying his application for T&P benefits. Defendants admit that, in conjunction with his appeal, Plaintiff submitted at least one report from a Leslee Bednark, LPC, and at least one report from a Dr. Andre Fredieu. Defendants deny each and every remaining allegation in paragraph 14. To the extent Plaintiff relies on documents contained in the

administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

15. Defendants admit that, in conjunction with his appeal, Plaintiff was referred to and evaluated by neutral physicians retained by the Retirement Plan, including Plan neutral neuropsychologist Stephen Macciocchi, and Plan neutral neurologist Barry McCasland. Defendants deny each and every remaining allegation in paragraph 15. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

16. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves.

17. Defendants admit that, in conjunction with his appeal, Plaintiff was referred to and evaluated by Plan neutral psychiatrist Raymond Faber. Defendants deny each and every remaining allegation in paragraph 17. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants

deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

18. Admitted.

19. Admitted.

20. Defendants admit that the Retirement Board denied Plaintiff's appeal. To the extent Plaintiff relies on documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his claim(s), Defendants reserve the right to ask the Court to strike those documents and any allegations based on them.

21. Admitted.

22. Admitted.

23. Defendants admit that Plaintiff has been gainfully employed by the Denver Parks and Recreation Department at times relevant to this matter. Defendants lack knowledge or information sufficient to form a belief about the truth of Plaintiff's remaining allegations.

24. Denied.

25. Defendants deny that Plaintiff is entitled to an award of benefits or to any relief whatsoever.

26. Defendants deny that Plaintiff is entitled to an award of benefits or to any relief whatsoever. Answering further, Defendants state that Plaintiff's benefit calculations are inflated because they fail to account for LOD benefits paid to Plaintiff during the relevant timeframe.

27. Denied. Answering further, Defendants state that Plaintiff's benefit calculations are inflated because they fail to account for LOD benefits paid to Plaintiff during the relevant timeframe.

28. Defendants deny that Plaintiff is entitled to attorneys' fees and costs.

In addition to the responses set forth in paragraphs 1 through 28 of this Answer, Defendants deny each and every allegation of fact and conclusion of law in the Complaint not otherwise specifically admitted in this Answer, and Defendants deny that Plaintiff is entitled to the relief demanded in the Complaint or to any relief whatsoever.

#### **FIRST AFFIRMATIVE DEFENSE**

The Retirement Board's decision was consistent with the terms of the Retirement Plan, supported by substantial evidence, and otherwise reasonable. Therefore, the decision was neither arbitrary and capricious nor an abuse of discretion, and it should be upheld.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that judgment be entered in their favor and against Plaintiff, that the Court award Defendants

all costs and fees incurred by them in defending against Plaintiff's claims, and that the Court grant them such other and further relief as the Court deems just and proper.

Dated: March 1, 2019

By:

s/ Michael L. Junk

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